Supreme Court, U.S.
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No. 92-488

In The

Supreme Court of the United States

October Term, 1992

SANDRA SEEFELD,

Petitioner,

versus

CLAIRE OLSEN, wife of/and GUY T. FLANNERY; MARGE PEARSON; CENTURY 21 REAL ESTATE CORPORATION; DON SMART AND ASSOCIATES, INC.; CENTURY 21 PARKER-MAY ASSOCIATES, INC.; WALDON M. HINGLE, ABC INSURANCE CO.; XYZ INSURANCE CO.; CDE INSURANCE CO.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

Skye McLeod
J. Timothy Woodard
Gelpi, Sullivan, Carroll & Gibbens
430 Notre Dame Street
New Orleans, Louisiana 70130
Telephone: (504) 524-9714
Attorneys for Defendant/Respondent Century 21 Real Estate Corporation

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

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QUESTION PRESENTED FOR REVIEW

1. Is Petitioner entitled to any relief from this Court when her case raises no Constitutional issues, represents no conflict within or between the circuits, and, indeed, is of so little legal significance that the Circuit Court refused to issue a written opinion?

LIST OF THE PARTIES

Inasmuch as Petitioner failed to include a list of parties in her Petition, Respondent assumes, in accordance with U.S. Supreme Court Rule 14(b), that the names of all parties appear in the caption of the case.

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Respondent, Century 21 Real Estate Corporation, respectfully submits this Brief In Opposition to Petition For A Writ Of Certiorari, filed herein by Sandra Seefeld.

STATEMENT OF THE CASE

Petitioner, Sandra Seefeld ("Seefeld" or "Petitioner"), contracted for the purchase of a 1.3 acre, improved tract

of commercially-zoned property in Slidell, Louisiana (the "Property") in December of 1983 for $275,000.00. Seefeld planned to use the Property as the site for her combination art gallery, museum and antique store. In February of 1984 she closed on the Property and began operating the "Musee de Masquerade, Ghost-Mart."

In her first year of operation, Seefeld reported gross sales of $25.00 from the businesses she conducted on the Property and deductions of $53,208.00, resulting in a net loss of $53,183.00. Over the next three years, her gross receipts, income and deductions were as follows:

Year	Gross Receipts	Gross Income	Deductions	Net Income (Loss)
1985	$1,079.00	($862.00)	$60.151.00	($61,013.00)
1986	$ 874.00	$799.00	$62,078.00	($61,279.00)
1987	$ 328.00	$ -0-	$45,794.00	($45,794.00)

In 1988, the year in which Petitioner closed the businesses and sold the Property, her gross receipts were *zero*.

On December 16, 1988, Seefeld brought a Civil RICO action against Century 21 Real Estate Corporation ("Century 21 REC") and numerous other individual and corporate defendants alleging that they had conspired to inflate the price of real estate in St. Tammany Parish. Seefeld never established, or even explained, how this supposed feat was accomplished. Century 21 REC's alleged participation in this local scheme was purportedly founded upon its nationwide television and print advertisements which extolled the benefits of home ownership and the abilities of its affiliates and their brokers.

Seefeld claimed that Marge Pearson, an employee of Century 21-Don Smart & Associates, Inc. ("Don Smart") and Seefeld's real estate agent, conspired with Seefeld's attorney (Waldon Hingle), the sellers of the property (Claire Olsen and Guy T. Flannery, or "The Flannerys") and the seller's real estate agent (Century 21 Parker-May Associates, Inc., or "Parker-May") to inflate the price of the property Seefeld ultimately purchased for use in her business. These defendants were alleged to have misrepresented the value of the Property and the possibility of construction of a proposed exit off an interstate highway to increase public access to the Property.

In answering the Complaint, Century 21 REC responded that it had no contact with Seefeld, the Flannerys, Waldon Hingle, Marge Pearson, Don Smart or Parker-May (the last two of which are *former* franchisees of Century 21 of Texas, Inc., a company owning the right to license franchises in Louisiana). Century 21 REC further responded that it was not responsible for any acts or omissions of the other defendants and that Seefeld could not possibly have relied upon the ads she claims to have relied upon in her petition since such ads were not in existence at that time (as evidenced by their 1987 copyright, some three years after Seefeld's purchase of the property). Finally, Century 21 REC responded that any cause of action Seefeld may have had arising out of the purchase of the property had prescribed.

Some two and one half years, and several amended pleadings later, the Defendants each filed Motions For Summary Judgment, all of which the District Court granted. Seefeld moved for reconsideration of the Court's

ruling but was denied relief. She then appealed the district court's decision to the U.S. Court of Appeals for the Fifth Circuit. The Fifth Circuit, in a *per curiam* decision, upheld the district court's dismissal of Seefeld's case on summary judgment. Citing (and quoting) its own Local Rule 47.5, the Circuit Court stated its determination not to publish the opinion. The Fifth Circuit's unpublished opinion is set forth below in its entirety:

> Before KING, EMILIO M. GARZA, and DeMoss, Circuit Judges.
>
> PER CURIAM:*
>
> For reasons fully set forth by the trial court in its opinion, we AFFIRM. See Local Rule 47.6 [sic].
>
> ---
>
> *Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

From this unpublished opinion, with no written findings, Seefeld has petitioned this Honorable Court for review on *certiorari*.

SUMMARY OF ARGUMENT

Seefeld's Petition fails to meet any requirement for *certiorari*.

ARGUMENT

1. Petitioner Has Not Met the Standard For Review.

The criteria to be applied in determining whether *certiorari* should be granted are set forth in U.S. Supreme Court Rule 10 which provides, in pertinent part:

> .1. A review on writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the Court's discretion indicate the character of reasons that will be considered:
>
> (a) When a United States court of appeals has rendered a decision in conflict with the decision of another United States court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.
>
> * * *
>
> (c) When a state court or a United States court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way that conflicts with applicable decisions of this Court.

None of those considerations are present in the instant case. While the law of civil RICO is indeed complex and oft times confusing, it will be rendered no less so by the granting of Seefeld's Petition. She does not possess the necessary elements of a RICO cause of action. The mere act of naming multiple defendants does not, after all, convert a complaint into a conspiracy any more than drawing a flowchart creates related enterprises and predicate acts. There may be, as Petitioner maintains, differences in the way the Fifth Circuit and other circuits apply RICO. These alleged differences do not afford Petitioner the relief she seeks, however. Under *any* interpretation or application of 18 U.S.C. §§1961 *et seq.*, Petitioner has no claim against Century 21 REC. The Fifth Circuit was so certain that summary judgment dismissing Seefeld's RICO claims was proper that it *did not even issue a written opinion*. The decision was not a close call, a new statement of the law or a clarification of the issues. It was deemed a waste of judicial resources – hardly the stuff of Supreme Court review. This opinion creates no split in the Circuits; the Circuit Court did not issue a written opinion.

Similarly, Petitioner's "due process" claims are calculated to provide a vehicle for review under the mantle of constitutional challenge where none in fact exists. Petitioner has no constitutionally-protected Fifth Amendment right to file untimely affidavits in opposition to a Motion For Summary Judgment. Nor can she claim that Respondent deprived her of any business or property. As detailed in the opening paragraph to Respondent's Statement of the Case, Petitioner never made *any* profits from

her business. Clearly, she would have had to have made some to have lost any.

From a decision of "no precedential value" and such little legal significance that the issuance of a written opinion was deemed a waste of judicial resources, Seefeld has petitioned this Court for *certiorari*. Respondent Century 21 REC maintains that it has undergone enough needless expense and has borne far too heavy a burden in having to defend – at the District, Circuit and now, Supreme Court levels, – a case completely devoid of merit, logic, craft or consistency.

The judgment of the Court of Appeals is correct. It does not conflict with other decisions by the Fifth Circuit, nor with the decisions of other circuits. It presents no constitutional challenge to Petitioner's rights, only a complaint that she should have been allowed to introduce a mountain of untimely and irrelevant exhibits into evidence. Century 21 REC responds, as it has been forced to below, not because Seefeld's claims have any validity whatsoever, but because she filed them.

2. Petitioner Misstated the Facts.

Given the speciousness of Petitioner's legal arguments, it is not surprising that the vast majority of her factual claims are inaccurate as well. Century 21 REC would exceed the page limits of its brief were it to counter each such misstatement and misrepresentation, however. Accordingly, it will concentrate on the chief fiction – Petitioner's description of the relationship between Century 21 REC and the other respondents.

From the beginning, Century 21 REC made it quite clear that it was far removed, in time, place and contact, with the events alleged by Petitioner to constitute a RICO scheme or conspiracy. The relationship between the various Century 21 corporations was set forth in Century 21 REC's Answer to the original Petition which it filed on August 15, 1989:

SECOND DEFENSE

> Century 21 Real Estate Corporation has no agents and is not, directly or indirectly, responsible for the acts of any other defendants in this action. Century 21 Real Estate Corporation never had a contractual relationship with defendants Don Smart and Associates ("Don Smart") and Century 21 Parker-May Associates, Inc. ("Parker-May"). Both agencies are former franchisees of Century 21 of Texas, Inc. and as such, were independently owned and operated. Accordingly, no acts by these companies or their employees or agents can create liability on the part of Century 21 Real Estate Corporation or on the part of Century 21 of Texas, Inc.

Century 21 REC's January 28, 1991 General Objection to Petitioner's discovery requests also make clear the relationship:

GENERAL OBJECTION

> As was set forth in the Answer of Century 21 Real Estate Corporation, it has no contractual relationship with any of the individuals identified by plaintiff as falling within the definition of "you." Further, Century 21 Real Estate Corporation has no franchise agreements with *any* broker or agent. Instead, Century 21 Real Estate Corporation has subfranchise agreements with

> various regional subfranchisors throughout the United States. It is these subfranchisors which, in turn, enter into franchise agreements with individual brokers or agents. The particular subfranchisor which contracted with the franchisees involved in this litigation has previously been identified and has even been named by plaintiff as a defendant. Accordingly, Century 21 Real Estate Corporation can only answer on its behalf and as to the documents it has in its possession and control.

Lastly, as made abundantly clear in Century 21 REC's August 5, 1991 Motion For Summary Judgment, at p. 5 of its Memorandum in Support:

> As has previously been recognized, real estate agents out in the field are not employed or controlled by Century 21. *See, Whitfield v. Century 21 Real Estate Corporation*, 484 F.Supp. 984 (S.D.Tex. 1979). Century 21 grants an exclusive license to use the Century 21 name, mark and trade secrets in a defined territory to a regional licensee and that entity grants a franchise to operate a real estate brokerage office at a specific location to a franchisee which employs individuals as real estate agents. The license agreement and the franchise agreement each contain provisions clearly stating that the licensee or the franchisee is an independent contractor and that neither party shall act as agent of the other.

Petitioner's misrepresentations about the National Advertising Fund (NAF) and Century 21 REC's role in respect to its administration is also a red herring. Century 21 REC acts as trustee for the NAF; it does not take profits from it. Petitioner's inability or unwillingness to

comprehend legitimate distinctions between different and separate corporate entities is no basis for Supreme Court review.

CONCLUSION

Sandra Seefeld undoubtedly exercised poor business judgment in connection with her investment in commercial real estate. The 1984 World's Fair in New Orleans failed to produce the hoped-for spill-over crowds in neighboring Slidell; a rumored interstate highway ramp never materialized; and the market for the macabre fell far short of Petitioner's expectations. All of these factors contributed to the loss of Petitioner's investment – none of these had anything to do with Respondent, Century 21 REC. Likewise, Century 21 REC had no control over or contract with the real estate agents and attorney charged by Petitioner as having misled her into making the investment.

From these disparate individuals and events, Petitioner attempted to fashion a RICO conspiracy. When the District Court found that no enterprise, pattern or racketeering activity existed, it dismissed her claim on summary judgment. Undeterred, Petitioner concocted another conspiracy theory for the Circuit Court – that Century 21 REC had conspired to withhold vital information from her and had pretended to be something that it was not. When the Circuit Court, in a *per curiam* decision, upheld the dismissal of Petitioner's suit, she took it to the highest court in the land.

This has to be the end of the line. Perseverance is no substitute for a valid claim and serves as no basis for review on *certiorari*. Petitioner certainly proves that "anyone can sue anyone for anything these days," however, her day in court should not be extended at the expense of innocent defendants like Respondent. Petitioner herein does not possess even the most basic grounds for Supreme Court review and Respondent, Century 21 REC, respectfully requests that her Petition be denied.

Respectfully submitted,

SKYE MCLEOD
J. TIMOTHY WOODARD
GELPI, SULLIVAN, CARROLL & GIBBENS
430 Notre Dame Street
New Orleans, Louisiana 70130
Telephone: (504) 524-9714
Attorneys for Defendant/Respondent
Century 21 Real Estate Corporation